

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PAUL BLACK,

Plaintiff,

-against-

JEFFREY S. SCHWARTZ and LAW OFFICE  
OF JEFFREY S. SCHWARTZ,

Defendants.

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**LINDSAY, Magistrate Judge:**

Before the court is the defendants' letter applications dated January 25 and 27, 2011, seeking to compel the plaintiff to respond to defendants' expert witness demands, to appear for a deposition and to extend the discovery deadline 90 days. Plaintiff opposes the application by letter responses dated January 27, and 28, 2011 and states that (i) he responded to the document requests on August 9, 2010 and in any event his client has no documents in his possession in response to defendants' document demands; (ii) defendants cancelled two deposition dates for plaintiff and failed to return three phone calls attempting to reschedule the deposition; and (iii) the discovery deadline should not be extended. That portion of plaintiff's letter application dated January 28, 2011 that responds to defendants' motion for joinder must be redirected to the district judge.

Also before the court is the defendants' second letter application dated February 2, 2011 seeking to compel plaintiff to respond to their Second Set of Interrogatories and defendants' Notice to Admit served on January 27, 2011 on the basis that plaintiff has refused to appear for a deposition. Plaintiff opposes the application by letter response dated February 3, 2011 and requests that the court (i) deny defendants' request for discovery because it was served on the eve of the discovery deadline; (ii) sanctions; and (iii) a cease and desist order for making the within discovery motions.

The court is troubled that the defendants delayed until three business days prior to the scheduled completion of discovery to raise the within discovery motion and then submitted an additional discovery motion after the close of discovery. Nevertheless, the defendants' applications are granted in part. Defendants' motion to produce plaintiff for a deposition and to respond to the expert witness demand is granted. Defendants' motion to compel the Second Set of Interrogatories and Notice to Admit is denied as premature as plaintiff's time to respond to this request has not expired. The court declines to impose sanctions.

Defendants' motion to extend the discovery deadline 90 days is denied. The court will grant a 45 day extension of the discovery deadline. Plaintiff is directed to produce Mr. Black for a deposition and respond to the expert witness demand on or before February 28, 2011. Plaintiff is advised that his failure to appear for a deposition or to produce relevant documents will lead to sanctions, including a recommendation that the case be dismissed.

All discovery, inclusive of expert discovery, is to be completed by March 14, 2011. The deadline to commence dispositive motion practice is extended to March 28, 2011. The final conference scheduled for March 1, 2011 is adjourned to April 15, 2011 at 2:00 p.m. The parties are directed to file a proposed joint pretrial order prior to the final conference.

Dated: Central Islip, New York  
February 7, 2011

**SO ORDERED:**

\_\_\_\_\_/s\_\_\_\_\_  
ARLENE ROSARIO LINDSAY  
United States Magistrate Judge